

ESTTA Tracking number: **ESTTA501817**

Filing date: **10/24/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Genesco Brands, Inc.
Granted to Date of previous extension	10/24/2012
Address	300 Delaware Avenue, 9th Floor Wilmington, DE 19801 UNITED STATES

Attorney information	Tywanda H. Lord Kilpatrick Townsend & Stockton LLP 1100 Peachtree Street, Ste 2800 Atlanta, GA 30309-4528 UNITED STATES tlord@kilpatricktownsend.com, tmadmin@ktslaw.com, lcrumbley@ktslaw.com, jshanks@ktslaw.com Phone:404-815-6500
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### Applicant Information

Application No	85517605	Publication date	06/26/2012
Opposition Filing Date	10/24/2012	Opposition Period Ends	10/24/2012
Applicant	BTGG, LLC Suite 160 222 Lakeview Ave, #259 West Palm Beach, FL 33401 UNITED STATES		

### Goods/Services Affected by Opposition


Class 025. First Use: 2010/07/29 First Use In Commerce: 2010/09/29 All goods and services in the class are opposed, namely: A-shirts; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Collared shirts; Golf pants, shirts and skirts; Golf shirts; Hooded sweat shirts; Knit shirts; Long-sleeved shirts; Polo shirts; Short-sleeved or long-sleeved t-shirts; Sweat shirts; T-shirts; Tee shirts; Wearable garments and clothing, namely, shirts
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3232063	Application Date	04/10/2001
Registration Date	04/24/2007	Foreign Priority Date	NONE

Word Mark	NONE
Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1987/12/31 First Use In Commerce: 1987/12/31 retail store services in the fields of footwear, apparel, backpacks, sports bags, jewelry and fashion accessories

U.S. Registration No.	2054259	Application Date	10/24/1995
Registration Date	04/22/1997	Foreign Priority Date	NONE
Word Mark	NONE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1987/12/31 First Use In Commerce: 1987/12/31 shoes and clothing, namely, shirts, T-shirts, sweatshirts, jackets, [ pants, shorts, ] socks and hats		

Attachments	76238378#TMSN.gif ( 1 page )( bytes ) 75009503#TMSN.gif ( 1 page )( bytes ) 2012-10-24 Notice of Opposition SWAG17 START ASKING GOD.pdf ( 6 pages )(141481 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Tywanda H. Lord/
Name	Tywanda H. Lord
Date	10/24/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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GENESCO BRANDS INC.	)	
	)	
	)	
Opposer,	)	
	)	Serial No.: 85/517,605
v.	)	Opposition No. _____
	)	
BTGG, LLC d/b/a SWAG17,	)	
	)	
Applicant.	)	

NOTICE OF OPPOSITION

Opposer Genesco Brands Inc. will be damaged by registration in International Class 25 of the mark and design shown in application Serial No. 85/517,605 and state the following grounds under 15 U.S.C. § 1063 and 37 C.F.R. §§ 2.101 and 2.104 for their opposition to that application:

1. Opposer Genesco Brands, Inc. is the owner and licensor of the trademark JOURNEYS, alone and in conjunction with other words and designs, used in connection with a well-known chain of over seven hundred JOURNEYS and JOURNEYS KIDZ retail stores located in major shopping malls throughout the United States, which are owned and operated by Opposer Genesco Brands, Inc.'s predecessor and exclusive licensee, Genesco Inc. (Opposer Genesco Brand Inc. and Genesco Inc. are collectively referred to as "Genesco"). The stores operating under the JOURNEYS trademarks sell a wide range of footwear, clothing, fashion accessories, novelties, bags, backpacks, and other goods in connection with the JOURNEYS marks.

2. The JOURNEYS stores and virtually all advertising for JOURNEYS stores prominently feature the design mark depicted below (the "Handprint Design Mark"), which is

owned by Genesco Brands Inc. By virtue of its use of the Handprint Design Mark, Genesco owns common law rights in the design.



3. Genesco's Handprint Design Mark is used in connection with JOURNEYS retail stores and on point of purchase materials in connection with clothing, footwear, accessories, bags, novelties, and other products sold in those stores.

4. Genesco also owns federal Registration No. 3,232,063 of its Handprint Design mark for "*retail store services in the fields of footwear, apparel, backpacks, sports bags, jewelry and fashion accessories*" in International Class 35. In addition, Genesco owns federal Registration No. 2,054,259 of its Handprint Design Mark for "*shoes and clothing, namely, shirts, T-shirts, sweatshirts, jackets, socks, and hats*" in International Class 25.

5. Genesco has used its Handprint Design Mark in commerce in connection with the advertising, promotion, distribution, and sale of footwear and clothing and other goods, as well as retail store services, since at least as early as December 31, 1987.

6. By virtue of continuous and extensive advertising of the Handprint Design Mark in connection with Genesco's retail stores and the products sold therein, and of the extensive sales under the mark for over 20 years, Genesco's Handprint Design Mark is widely and favorably known by the public throughout the United States.

7. Genesco's Handprint Design Mark is symbolic of the substantial goodwill and consumer recognition established by Genesco as a result of the outstanding quality and extensive sales of products through its retail stores throughout the United States for many years. Genesco

has expended large amounts of money, time, and effort in advertising and promoting such goods and services under the Handprint Design Mark. By reason of Genesco's extensive use and advertising of the Handprint Design Mark and resulting favorable public recognition, the Handprint Design Mark uniquely identifies Genesco and its retail stores and related products and services to the public. As such, Genesco has acquired extensive common law rights in the Handprint Design Mark in connection with its retail store services and with footwear, clothing and other goods.

8. Applicant BTGG, LLC d/b/a Swag17 ("Applicants") filed application Serial No. 85/517,605 on January 16, 2012 to register the mark SWAG17 START WITH ASKING GOD & Design ("Applicant's Design Mark"), which is reproduced below:



Applicant's Design Mark, which was published for opposition in the Official Gazette on June 26, 2012, is for use in connection with "*a-shirts; athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; collared shirts; golf pants, shirts and skirts; golf shirts; hooded sweat shirts; knit shirts; long-sleeved shirts; polo shirts; short-sleeved or long-sleeved t-shirts; sweat shirts; t-shirts; tee shirts; wearable garments and clothing, namely, shirts*" in International Class 025.

9. Genesco continuously has used its Handprint Design Mark since long prior to the Applicant's actual or constructive first use date.

10. Applicant's Design Mark prominently incorporates a handprint design that is virtually identical in appearance and commercial impression to Genesco's Handprint Design Mark.

11. Applicant's Design Mark is proposed to be used with goods in International Class 025 that are identical to the goods Genesco offers under its Handprint Design Mark.

12. Genesco will be damaged by the registration of Applicant's Design Mark in International Class 025 because the mark so resembles Genesco's previously used Handprint Design Mark as to be likely to cause consumer confusion, mistake and deception. Consumers familiar with Genesco's Handprint Design Mark would be likely, erroneously, to believe that Applicant's goods are those of Genesco or are endorsed, sponsored, or licensed by Genesco. Thus, registration of Applicant's mark with respect to International Class 025 on the Principal Register would be inconsistent with Genesco's rights in its Handprint Design Mark.

13. The required opposition fee is being electronically processed in connection with this Notice of Opposition. The Director is authorized to debit KILPATRICK TOWNSEND & STOCKTON LLP's Trademark Deposit Account No. 20-1430 for any deficiency in the required fee.

Opposer Genesco Brands, Inc. therefore requests that application Serial No. 85/517,605 be refused registration

Respectfully Submitted,

/Jaclyn T. Shanks/  
Tywanda H. Lord  
Jaclyn T. Shanks

KILPATRICK TOWNSEND &  
STOCKTON LLP  
1100 Peachtree Street  
Suite 2800

Atlanta, GA 30309-4530  
(404) 815-6500

Attorneys for Opposer  
Genesco Brands Inc.

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being filed electronically through the U.S. Patent and Trademark Office's ESTTA system on October 24, 2011.

BY: /Jaclyn T. Shanks/



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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GENESCO BRANDS INC.	)	
	)	
	)	
Opposer,	)	
	)	Serial No.: 85/517,605
v.	)	Opposition No. _____
	)	
BTGG, LLC d/b/a SWAG17,	)	
	)	
Applicant.	)	

**CERTIFICATE OF SERVICE**

This is to certify that the foregoing NOTICE OF OPPOSITION was served on Applicant by depositing true and correct copies in the first class mail, postage pre-paid, addressed as follows:

BTGG, LLC  
d/b/a Swag17  
222 Lakeview Avenue #259  
Suite 160  
West Palm Beach, Florida 33401

This 24th day of October, 2012.

/Jaclyn T. Shanks/  
Jaclyn T. Shanks  
KILPATRICK TOWNSEND &  
STOCKTON LLP  
1100 Peachtree Street Suite 2800  
Atlanta, Georgia 30309-4530  
(404) 815-6500

Attorney for Genesco Brands Inc.